

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ali Shahrokhi,

Plaintiff

v.

Nicholas Boutos, et al.,

Defendants

Case No. 2:23-cv-00671-CDS-DJA

Order Granting Motion to Dismiss the
Third Amended Complaint

[ECF No. 80]

This is a 42 U.S.C. § 1983 action brought by pro se plaintiff Ali Shahrokhi.¹ I previously granted Shahrokhi leave to amend claim 2 in this case and file a third amended complaint (TAC), however that leave was given with very specific instructions. *See Order*, ECF No. 75 at 18–20. After stipulating to extend the time to file the TAC (ECF Nos. 76, 78), Shahrokhi filed it on February 20, 2024. TAC, ECF No. 79. Defendants Nicholas Boutos and Kenneth Bourne now move to dismiss the TAC, arguing: (1) Shahrokhi failed to comply with my order permitting him to amend claim 2, (2) the TAC fails to state a claim upon which relief can be granted, and (3) that immunity bars this action. Mot., ECF No. 80. Shahrokhi filed an opposition to the motion, wherein he asserts that the Family Division of the Eighth Judicial District Court does not have jurisdiction over him, denies the existence of the same child custody case that formed the bases of his many cases in this District, and lodges unhelpful and irrelevant personal attacks against the defendants. *See Opp'n*, ECF No. 81. This motion is now fully brief. *See Reply*, ECF No. 82. For the reasons set forth herein, I grant defendants' motion to dismiss. As a result, I kindly direct the Clerk of Court to enter judgment accordingly and to close this case.

¹ As noted in my omnibus order resolving several outstanding motions, this is Shahrokhi's tenth action in this court related to his ongoing dispute with two cases in the Family Division of the Eighth Judicial District Court. Omnibus order, ECF No. 75 at 1, n.1 (listing cases).

1 I. Discussion

2 In my order granting Shahrokhi leave to amend, I instructed him that he “must comply
 3 with the instructions regarding filing the amended complaint set forth in the conclusion of
 4 this order.” ECF No. 75 at 18 (emphasis in original). As relevant here, those instructions
 5 directed Shahrokhi to “only bring the § 1983 claim relating to [his] arrest on the bench warrant,”
 6 and further stated that the TAC could not “challenge, either directly or indirectly, Shahrokhi’s
 7 family court custody and child support cases.” *Id.* at 19–20. Defendants argue that I should
 8 dismiss the TAC because (1) Shahrokhi added the additional claims for relief; (2) it violates
 9 other parts of my order, including continuing to litigate already dismissed claims, and (3) it
 10 challenges the family court custody and child support cases. See ECF No. 80 at 3–7.

11 In response, Shahrokhi argues that the defendants are “lying” when they state there is an
 12 open and ongoing state case in Nevada, and again challenges the validity of the warrant issue
 13 against him. See ECF No. 81 at 2–3. He also claims that this court’s subject matter jurisdiction
 14 over this action is based on “diversity jurisdiction,” and that the state of Nevada has no
 15 jurisdiction over him because he resides in California. *Id.* at 2–4; 5–6. Finally, Shahrokhi
 16 contends that the *Younger* abstention doctrine does not apply here, that the defendants are not
 17 covered by any sort of immunity, and that the TAC adequately alleges both state and federal
 18 claims of excessive force against the defendants. *Id.* at 7–9; 11–19.

19 I find that Shahrokhi violated both instructions. After being instructed to only bring a
 20 complaint pursuant to 42 U.S.C. § 1983,² he brought a second claim under Article I, §§ 8 and 18 of
 21

22 ² Shahrokhi’s § 1983 claim also includes a civil conspiracy allegation under 42 U.S.C. § 1985. I do not find
 23 this to be a violation of my order as the § 1985 claim arises out of the same allegations. To assert a cause of
 24 action under Section 1985(3), a plaintiff must sufficiently allege three elements: “(1) the existence of a
 25 conspiracy to deprive the plaintiff of equal protection of the laws; (2) an act in furtherance of the
 26 conspiracy and (3) a resulting injury.” *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1141 (9th Cir. 2000).
 Although Shahrokhi has alleged the general elements of a § 1983(5) claim, it nonetheless fails. As the
 Ninth Circuit has explained, “[g]enerally, without ‘some racial, or perhaps otherwise class-based,
 invidiously discriminatory animus behind the conspirators’ action,’ no action under 42 U.S.C. § 1985 may
 lie.” *Prasad v. Santa Clara Dep’t of Soc. Servs.*, 685 F. App’x 538, 540 (9th Cir. 2017) (citing *Griffin v. Breckenridge*,
 403 U.S. 88, 102 (1971)). Shahrokhi has not alleged any racial or any other class-based animus, much less

1 Nevada's Constitution.³ See ECF No. 79 at 8–10. However, I find that Shahrokhi only violated
 2 this order in part by bringing the claim under Article I, Section 8 of Nevada's Constitution. I
 3 abstained from considering this exact claim for the reasons set forth in my omnibus order
 4 dismissing the second amended complaint. See ECF No. 75 at 13. However, because I am required
 5 to give pro se plaintiffs the benefit of the doubt, see *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.
 6 2010), I do not find that Shahrokhi violated my order by bringing the additional claim under
 7 Article I, Section 18 of Nevada's Constitution because it is the state analogue to his § 1983 claim.
 8 See *Hiibel v. Sixth Jud. Dist. Ct.*, 59 P.3d 1201, 1204 (Nev. 2002) (discussing the Fourth Amendment
 9 to the U.S. Constitution, which is substantively identical to Article I, Section 18 of the Nevada
 10 Constitution). I also find that the allegations in the TAC violate my directive not to “challenge,
 11 either directly or indirectly, Shahrokhi’s family court custody and child support cases.” Despite
 12 that clear order, the TAC includes allegations challenging his family court cases. See ECF No. 79
 13 at 4, ¶¶ 13, 14 (stating the defendants illegally arrested Shahrokhi on an “invalid bench warrant,”
 14 again challenging the warrant,⁴ but also alleging that the family court judge acted without
 15 judicial authority when it issued a bench warrant for Shahrokhi’s arrest).

16 Although I find Shahrokhi only violated my order in part, he nonetheless violated it—
 17 repeatedly. Thus, after consideration of those violations, together with the fact that this is not
 18 the first time Shahrokhi has violated the rules of this court,⁵ and considering his history and
 19

20 any allegations that the defendants conspired against his rights based on his membership to any class.
 21 Thus, the TAC fails to state a claim under 42 U.S.C. § 1985(3) and is therefore dismissed.

22 ³ Article I, Section 8 of Nevada's Constitution addresses the rights of an accused in criminal prosecutions.
 Article I, Section 18 addresses unreasonable searches and seizures.

23 ⁴ In my order dismissing the second amended complaint, I found that the defendants Boutos and Bourne
 were acting to enforce a facially valid child support enforcement bench warrant. See Order, ECF No. 75 at
 15–17.

24 ⁵ See Min. order, ECF No. 26 (finding Shahrokhi violated the local rules and cautioning him that failure to
 comply with the rules may result in sanctions, including but not limited to dismissal of this action);
Shahrokhi v. Throne, 2022 U.S. Dist. LEXIS 103128 at *4, n. 11 (D. Nev. June 9, 2022) (cautioning Shahrokhi
 and opposing counsel that they must comply with the local rules); see also *Shahrokhi v. Throne*, 2022 U.S.
 Dist. LEXIS 127575, at *1 n. 1 (D. Nev. July 18, 2022) (noting that Shahrokhi failed to comply with local
 rules when he filed a response and a countermotion in one document);

1 failure to comply with court orders throughout the numerous cases he brought in this district, I
 2 dismiss the TAC.

3 “District courts have inherent power to control their dockets.” *Thompson v. Housing Auth. of*
 4 *Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). And they “may dismiss an action for failure to
 5 comply with any order of court.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (citing Fed.
 6 R. Civ. P. 41(b)); *see also Comput. Task Grp, Inc. v. Brotnby*, 364 F.3d 1112, 1115 (9th Cir. 2004)
 7 (applying this test and affirming an order imposing dismissal as a terminating sanction under
 8 Rule 37(b) for repeated violations of discovery orders). Because the five-factor test for dismissal
 9 is a disjunctive balancing test, not all five factors have to support dismissal. *See Valley Eng’rs Inc. v.*
 10 *Elec. Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998); *Hernandez v. City of El Monte*, 138 F.3d 393, 399
 11 (9th Cir. 1998).

12 In determining whether to dismiss a case for failure to comply with a court order the
 13 district court must weigh five factors including: “(1) the public’s interest in expeditious
 14 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
 15 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
 16 availability of less drastic alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

17 The first factor—the public’s interest in the expeditious resolution of litigation—always
 18 favors dismissal. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). In this case, the first two
 19 factors weigh heavily in favor of dismissal. Shahrokhi, who has already been declared vexatious in
 20 this district,⁶ was given the opportunity to bring this action, and thereafter was granted
 21 multiple opportunities to amend this complaint. Orders granting leave to amend, ECF Nos. 58,
 22 75. The court conducted a full analysis of the second amended complaint and dismissed it
 23 accordingly. Order dismissing SAC, ECF No. 75. However, based on the allegations in the SAC
 24 together with the implication of the *Younger* abstention doctrine,⁷ the court granted Shahrokhi
 25

26⁶ See *Shahrokhi v. Throne*, 2022 U.S. Dist. LEXIS 127575, at *1 (D. Nev. July 18, 2022).

⁷ Shahrokhi argues that this action arises under diversity jurisdiction, so this court has no “discretion
 regarding whether it uses its jurisdiction to decide on state issues or not.” ECF No. 81 at 3, n. 3; 4-5. But

1 leave to file the TAC with specific instructions so the court could evaluate his proposed § 1983
 2 claim without implicating his underlying state court proceedings. As set forth above, he failed to
 3 follow those specific instructions. It's clear from his opposition why he failed to comply: he
 4 makes clear the purpose of this action is to vindicate his belief that: (1) there is no ongoing state
 5 court proceeding against him and that the state of Nevada has no jurisdiction over him because
 6 he no longer resides in Nevada (*see* ECF No. 81 at 2 (“there is absolutely not even a single case
 7 ongoing in Nevada against Shahrokhi regarding his child custody matters)), and *id.* fn. 2
 8 (“Defendants fail to demonstrate which state case is ongoing in Nevada and simply lie as usual,
 9 there is no state case involving Shahrokhi’s child custody matters anywhere in the entire state of
 10 Nevada. It is wishful thinking for the defendant. Shahrokhi has left the state, so Nevada
 11 absolutely has no jurisdiction over him nor his minor child.”)), and (2) the bench warrant issued
 12 in his family court case that led to his arrest was invalid, *see* ECF No. 81 at 3 (“Shahrokhi
 13 vehemently opposes because the bench warrant was invalid and was not issued/signed by a
 14 judicial officer or magistrate, as mandated by the state’s constitution and requirements.”); *see also*
 15 ECF No. 79 (“SHAHROKHI was then placed into an unmarked car, and immediately started
 16 telling both defendants, BOUTOS and BOURNE, that the bench warrant was invalid and
 17 insufficient on its face as it did not have a judge’s signature or supported by any affidavit or
 18 affirmation mandated by law ¶”).

19 Shahrokhi’s failure to comply with this court’s orders has led to consuming “large
 20 amounts of the court’s valuable time that it could have devoted to other major and serious . . .
 21 cases on its docket.” *Ferdik*, 963 F.2d at 1261. “[I]t is incumbent upon us to preserve the district
 22 courts’ power to manage their dockets without being subject to the endless vexatious

23
 24 he brought this action pursuant to 42 U.S.C. § 1983, so federal question jurisdiction applies as this action
 25 arises “under the Constitution, laws, or treaties of the United States.” *See* 28 U.S.C. § 1331. Diversity
 26 jurisdiction is found in 28 U.S.C. § 1332, which extends federal jurisdiction to cases arising under state
 law *only* where there is complete diversity of the parties, and the statutory amount-in-controversy (over
 \$75,000) is satisfied. *See* 28 U.S.C. § 1332(a)(1). The TAC contains brings both federal and state law
 claims, so diversity jurisdiction does not apply.

1 noncompliance of litigants like the pro se plaintiff in that case.” *id.*; *see also Computer Task Grp.*, 364
 2 F.3d at 1115 (“Where a court order is violated, the first and second factors will favor sanctions . . .”).
 3 Further, the court has little confidence Shahrokhi will comply with future orders of this
 4 court, which will in it of itself, consuming more court resources and time.⁸ Thus, the first two
 5 factors weigh heavily towards dismissal.

6 The third factor, the risk of prejudice to defendants, always weighs in favor of dismissal.
 7 “In determining whether a defendant has been prejudiced, [the court] examine[s] whether the
 8 plaintiff’s actions impair the defendant’s ability to go to trial or threaten to interfere with the
 9 rightful decision of the case.” *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987) (citation
 10 omitted). Here, as already discussed, Shahrokhi has repeatedly failed to obey the court’s orders
 11 and based on his history in this case, together with his litigation tactics in the numerous other
 12 cases brought in this district, the court has little confidence he will comply with future orders.
 13 His failures to comply with the court’s instructions, as well as the rules of the court, creates
 14 undue delay, prejudices defendants, and overburdens the court.

15 Generally, the fourth factor—the public policy favoring disposition of cases on their
 16 merits—typically weighs against dismissal. *See Hernandez*, 138 F.3d at 399. This case is no
 17 exception, even despite Shahrokhi’s demonstrated inability to comply with court orders and
 18 rules.

19 Finally, the availability of less drastic alternatives also weighs towards dismissal. The
 20 court does not need to explore every option before dismissing a case. *Nevijel v. N. Coast Life Ins. Co.*,
 21 651 F.2d 671, 674 (9th Cir. 1981). Indeed, the court only needs to ensure that “possible and
 22 meaningful alternatives be reasonably explored, bearing in mind the drastic foreclosure of rights
 23 that dismissal effects.” *Id.* And “case law suggests that warning a plaintiff that failure to obey a
 24 court order will result in dismissal can suffice to meet the ‘consideration of alternatives’

25
 26 ⁸ As an example, if this action were to proceed to trial, the court may need to instruct Shahrokhi that he
 could not introduce certain arguments or pieces of evidence. His pleadings make clear he would be
 unable to comply with such orders.

1 requirement.” *Malone*, 833 F.2d at 132 (citations omitted). Here, the court has explored many
2 alternatives to dismissal. The court gave Shahrokhi explicit instructions about amending his
3 complaint a third time. *See* ECF No. 75 at 19–20. It also gave him additional time to amend the
4 TAC. *See* Order granting mot. to extend time to file the TAC, ECF No. 78. Further, the court also
5 previously cautioned Shahrokhi that he could face sanctions if he failed to comply with the rules
6 of this court. *See* Min. order, ECF No. 26; Order, ECF No. 75. Despite these warnings, he
7 continues to violate court orders, and continues to engage in abusive litigation tactics. For
8 example, Shahrokhi lodges irrelevant personal attacks in the TAC. *See* ECF No. 79 at 5 (calling a
9 non-party a “low-life” and a drug dealer). He also lodges irrelevant character attacks in his
10 opposition to the motion to dismiss. *See* ECF No. 81 at 4 (allegations of irrelevant character
11 evidence against a defendant); *id.* at 9 (accusing defendants of “lying” and misleading the court).
12 He also threatens additional lawsuits. *See id.* (stating that even if this action is dismissed, he will
13 just file another case and “defendants are put on notice: I am not going anywhere until I get
14 justice, whether it’s through filing a new lawsuit or pursuing an appeal and another lawsuit”).
15 He engages in this conduct this even after Judge Dorsey found that his filings are “littered with
16 extreme and crass language,” ECF No. 21 at 3, n. 9 (citing ECF No. 18 at 15) in 2:22-cv-0001-JAD-
17 VCF, and that his repeat filings are harassing and are not brought in good faith. *Id.* at 4. The
18 history of this case, and the ten other actions brought by Shahrokhi, amply demonstrates that he
19 does not understand, or cannot accept, that he cannot challenge on-going state court
20 proceedings in this court and providing further opportunities to comply would be futile.
21 Accordingly, the court concludes that no less drastic alternatives remain available, so the fifth
22 factor thus weighs towards dismissal.

23 For these reasons, the majority of the factors militate in favor of dismissal, so defendants’
24 motion to dismiss is granted. The TAC is hereby dismissed without leave to amend.

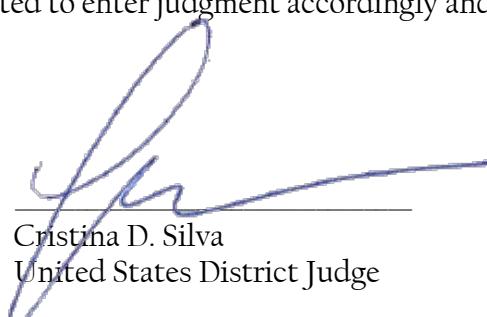
25
26

1 II. Conclusion

2 IT IS HEREBY ORDERED that defendants' motion to dismiss the third amended
3 complaint [ECF No. 80] is GRANTED with prejudice.

4 The Clerk of Court is kindly instructed to enter judgment accordingly and to close this
5 case.

6 Dated: February 18, 2025

7 
8 Cristina D. Silva
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26